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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)

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THE PEOPLE,	C060659
Plaintiff and Respondent,	(Super. Ct. No. 07F02708)
v.	
DANIEL MICHAEL TREGLIA,	
Defendant and Appellant.	

This is an appeal pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).

On March 20, 2007, defendant Daniel Michael Treglia, along with codefendants who are not parties to this appeal, was charged with possession of a weapon by a state prisoner (Pen. Code, § 4502, subd. (a)),<sup>1</sup> and the complaint alleged he had a strike conviction and had served a prior prison term (§§ 667, subds. (b)-(i), 1170.12, 667.5, subd. (b), respectively).

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<sup>1</sup> Hereafter, undesignated statutory references are to the Penal Code.

On October 9, 2007, defendant exercised his right to act as his own counsel, and because defendant remained incarcerated, the trial court signed a standardized written order outlining defendant's "Pro Per Privileges."

Defendant made many largely unsuccessful motions alleging that his privileges were either inadequate as ordered, or that jail personnel had interfered with those privileges.

On October 29, 2008, as part of a bargain, in exchange for an agreed sentence of 16 months consecutive to his current sentence, defendant pled guilty to the lesser related offense of manufacturing a weapon in prison (§ 4502, subd. (b)), and admitted he had a strike conviction for assault with a firearm (§ 245, subd. (a)(2)).

The factual basis supporting the plea and admission shows that on October 11, 2006, defendant, while a prison inmate, had manufactured "an ice-pick-type weapon," and that he had a strike conviction from San Bernardino County.

Defendant did not object when the court imposed the agreed 16-month sentence or when the court imposed a \$200 restitution fine. As contemplated by the bargain, the prior conviction allegation was dismissed.

Defendant filed a timely notice of appeal, but he did not request a certificate of probable cause.<sup>2</sup>

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<sup>2</sup> The bargain called for a waiver of appellate rights, at least as to the sentence. However, because the Attorney General has not moved to dismiss this appeal based on that waiver, we decline to assess its validity and scope.

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and asks this court to review the record and determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Having undertaken an examination of the entire record, we find no arguable errors that would result in a disposition more favorable to defendant.

Defendant exercised his right to file a supplemental brief. We will address his claims in the order presented by his brief.

1. Defendant contends the trial court "erred in not running 16[-]month prison term together with first in prison consecutive sentence." Defendant was first sent to prison for a San Bernardino conviction for assault with a firearm, the strike conviction. (§ 245, subd. (a)(2).) While in prison in Tuolumne County, he was convicted of possession by an inmate of a weapon. (§ 4502, subd. (a).)

Defendant argues his current sentence should be calculated along with the Tuolumne County sentence, and the result of that calculation should be imposed consecutively to his San Bernardino sentence. He relies on a sentencing rule applicable to in-prison offenses that he contends would lower his total sentence, due to application of the general rule that consecutive sentences are imposed at the rate of one-third the midterm. (§ 1170.1, subds. (a) & (c); *People v. Venegas* (1994) 25 Cal.App.4th 1731, 1742-1743.) Although defendant received a one-third midterm sentence of eight months, doubled to 16 months because of his

strike conviction, defendant claims that did not comport with sentencing rules applicable to in-prison offenses.

We decline to address this claim on the merits.

A plea bargain is interpreted like a contract. (See *People v. Haney* (1989) 207 Cal.App.3d 1034, 1037-1038.) As indicated, here defendant was charged with possession of a weapon by an inmate, but he pled guilty to the related offense of manufacturing a stabbing weapon while an inmate, which carries a lower sentencing triad. (§ 4502, subds. (a) ["two, three, or four years"] & (b) ["16 months, or two or three years"].) He received another benefit because the prior prison term allegation was dismissed. The burden he undertook was that his agreed 16-month sentence would be consecutive to his current prison sentence. Now, defendant seeks to retain the benefit of his bargain, but repudiate an agreed component of the sentence.

"[A] challenge to a negotiated sentence imposed as part of a plea bargain is properly viewed as a challenge to the validity of the plea itself. Therefore, it was incumbent upon defendant to seek and obtain a probable cause certificate in order to attack the sentence on appeal. (§ 1237.5.)" (*People v. Panizzon* (1996) 13 Cal.4th 68, 79; see *People v. Rushing* (2008) 168 Cal.App.4th 354, 358-362.) Because defendant failed to obtain a certificate of probable cause, we decline to address his sentencing claim, because it attacks the validity of the plea bargain he made.

2. Defendant contends the trial court should have "r[u]n [his] \$1,200.00 of restitution from [Tuolumne] County together with

Sacramento County \$200.00, then consider[ed] inability to pay and reduce[d the total fines] to minimum \$200.00."

The relevant statute requires a minimum restitution fine of \$200 in each *separate* felony case, absent "compelling and extraordinary reasons" stated on the record, though the ability to pay can be considered in determining the *amount* of the fine. (§ 1202.4, subds. (b), (c) & (d); see *People v. Schoeb* (2005) 132 Cal.App.4th 861, 864.)

Defendant was told about the restitution fine before he entered his plea in this case and he did not challenge the \$200 fine when the trial court imposed it. We must presume he has the ability to pay it. (*People v. Romero* (1996) 43 Cal.App.4th 440, 447-449 [defendant presumed to have ability to pay restitution fine], cited with approval on this point in *People v. Avila* (2009) 46 Cal.4th 680, 729.)

Defendant cites authority for the proposition that the *amount* of a fine can be part of a plea bargain, but the statutory minimum fine was imposed in this case, and the amount of the fine, or its relationship to any other fine, was not part of the bargain. To the extent defendant claims the fine in this case must be combined with his existing unpaid fine from a prior case, he cites no authority for such proposition and we are aware of no such authority; accordingly, we reject the contention of error. (See *People v. Stanley* (1995) 10 Cal.4th 764, 793; *People v. Diaz* (1983) 140 Cal.App.3d 813, 824.)

3. Defendant contends the trial court denied him "pro-per phone calls to obtain witnesses in his favor" and that he pled

guilty because of his inability to contact witnesses. Whether or not framed as an attack on the guilty plea, we must assess the effect of his claim. (See *People v. Emery* (2006) 140 Cal.App.4th 560, 564-565.) By claiming he pled guilty because his ability to defend himself had been wrongfully impaired, rather than for the reasons stated on the record at the change of plea hearing, defendant is in effect attacking the validity of the plea. Because defendant did not obtain a certificate of probable cause, he cannot attack the plea in this appeal. (*Id.* at p. 562.)

DISPOSITION

The judgment is affirmed.

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SIMS, Acting P. J.

We concur:

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RAYE, J.

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CANTIL-SAKAUYE, J.